XI-C-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(14)

आदेश पत्रक

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..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 45 OF 2001

DIVISION BENCH: **HON. SHRI L.C. BHADOO, &**
HON. SHRI DHIRENDRA MISHRA, JJ

Appellant : Lok Nath son of Lakmu Gond, aged 37 yrs, resident of Mawali Gula, P.S. Faizalpur, District Bastar (Chhattisgarh)

Versus

Non-applicant : State of Chhattisgarh through P.S. Faizarpur, District Bastar, Chhattisgarh.

Presence:
Mr. V.P. Gupta, counsel for the appellant.
Mr. D.K. Gwalre, Dy. Govt. Advocate for the State.

ORAL JUDGMENT

(20th April 2007)

PER L.C. BHADOO, J

This appeal is directed against the judgment of conviction and order of sentence dated 15.11.2000 passed by 3rd Additional Sessions Judge, Bastar in Sessions Trial No. 273/2000 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the IPC, sentenced him to undergo imprisonment

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for life and pay a fine of Rs.5,000/-, in default of payment of fine to further undergo one year's R.I.

2. Case of the prosecution is that PW-1 Bodhabai, wife of the deceased lodged a report in the Police Station – Fraizarpur to the effect that on 24.4.2000 Loknath sent his son to call her husband to treat his boil by exorcism. Thereafter, her husband went to the house of Loknath for his treatment. At about 3.00 o'clock her husband returned and informed her that Loknath has assaulted him saying that as to why he has come late. On 25.4.2000 at about 5.00 a.m. in the morning she went to the forest to pluck leaves. At about 11.00 a.m. when she was returning from the forest, she saw that her husband was sitting in the house of Loknath, on which she asked her husband to accompany her to their house, whereupon Loknath said that he will come later, he will not go just now, therefore, she left her husband at the house of Loknath. After half an hour daughter of Somaru came and informed that Loknath has committed murder of her maternal uncle, therefore, she went to the house of Loknath and saw that her husband was lying dead. There were injuries caused by axe on the jaw and back of her husband. She started weeping. Receiving this report Station House Officer, Police Station – Fraizarpur registered the crime under Section 302 of the IPC, left for the scene of occurrence and he prepared the inquest (Ex.P/2) on the dead body of Laikhan. He took into possession plain and bloodstained

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soil from the place of occurrence under Ex.P/3. While in police custody accused gave memorandum (Ex.P/4), pursuant to which weapon of offence axe was seized under Ex.P/5. Dead body of Laikhan was sent for postmortem examination to Maharani Hospital, Jadgalpur where Dr. R.B.P. Gupta (PW-4) conducted postmortem and prepared the postmortem report (Ex.P/8), in which he opined that cause of death was hemorrhagic shock due to excessive bleeding from the injuries and nature of death was homicidal.

3. After completion of investigation charge sheet was filed in the Court of Chief Judicial Magistrate, Jagdalpur who in turn committed the case to the Sessions Judge, Jagdalpur from where learned Additional Sessions Judge, received the case on transfer for trial.

4. Prosecution examined six witnesses at the trial in order to establish the charge against the accused. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.

5. Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused as aforementioned.

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6. We have heard Mr. V.P. Gupta, learned counsel appearing on behalf of the accused/appellant and Mr. D.K. Gwalre, learned Dy.G.A. for the State/respondent.

7. Mr. Gupta has not disputed the homicidal death of Laikhan. Moreover, PW-2 Balo @ Balmati has categorically stated that accused attacked the deceased with axe and PW-4 Dr.R.B.P. Gupta, who conducted postmortem on the body of deceased has stated that there were injuries on the body of Laikhan, wind pipe was cut, injuries were ante mortem in nature and the death was homicidal. His report is Ex.P/8. Therefore, from the above ocular and medical evidence it is established that death of Laikhan was homicidal in nature.

8. As far as involvement of the accused/appellant in crime in question is concerned, PW-2 Balo @ Balmati, girl of 10 years, so-called sister of the accused has stated that she knew Laikhan, he was her maternal uncle. She has stated that the accused attacked Laikhan with axe, she witnessed the accused attacking Laikhan with axe. On account of assault made by the accused, he fell down, thereafter accused again attacked him with axe on his head. Her house and the house of the accused are adjacent. At that time she was standing on the wall outside her house from where she witnessed the accused attacking the deceased with axe. Thereafter, she narrated the incident to Bodhabai, wife of the

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deceased. In the cross-examination of this witness, the defence has not been able to elicit any circumstance which discredits the evidence of this witness. Moreover, PW-1 Bodhabai has stated that on the fateful day, in the morning she had gone to the forest to pluck leaves, at about 11.00 a.m. when she was returning from the forest, she saw that her husband was sitting in the house of accused Loknath, on which she asked her husband to go to their house but the accused asked her that he will come later, therefore, she left for her house. After half an hour Balo came to her house and informed that accused Loknath has murdered Laikhan with axe as a result of which blood was oozing out. Thereafter, she went to the house of Loknath, she saw that her husband was already dead and his dead body was lying in the house of accused. In the cross-examination of this witness also, the defence has not been able to elicit any circumstance which discredits the evidence of this witness. Therefore, from the above evidence it is established that Bodhabai while returning from the forest at about 11.00 a.m. saw her husband sitting in the house of accused, asked him to accompany her to their house, on which accused asked her that he (deceased) will come later and thereafter, on being informed by Balo, she went to the house of the accused, saw her husband lying dead there. Apart from that the accused has not explained the circumstances under which dead body of Laikhan was found in his house, therefore, he has failed to discharge the burden which was on him as per provisions of Section 106 of the Indian Evidence Act.

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Moreover, weapon of offence axe has also been seized at the instance of the accused, therefore, in view of the above ocular and circumstantial evidence, it is established that accused was author of the crime in question. We do not find any illegality or infirmity in the judgment of the trial Court.

9. In the result, the appeal partly succeeds. Substantive sentence imposed upon the accused/appellant is maintained. However, fine amount of Rs.5000/- imposed upon the accused being excessive is reduced to Rs.100/-, in default of payment of fine to further undergo R.I. for one month.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

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